

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 13**

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**EXELON NUCLEAR SECURITY, LLC**

**Employer**

**and**

**Case No. 13-RC-270906**

**NATIONAL UNION OF NUCLEAR SECURITY**

**OFFICERS affiliated with LEOS-PBA**

**Petitioner**

**and**

**INTERNATIONAL UNION, SECURITY,  
POLICE AND FIRE PROFESSIONALS  
OF AMERICA (SPFPA) and ITS LOCAL  
NO. 228**

**Intervenor**

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**PETITIONER’S OBJECTIONS TO REQUEST FOR REVIEW**

Petitioner National Union of Nuclear Security Officers (“NUNSO”) affiliated with LEOS-PBA, by its undersigned counsel, submits this Opposition to the Request for Review filed by Intervenor International Union, Security, Police and Fire Professionals of America and its Local No. 228 (collectively, “SPFPA”). SPFPA requests review of the ruling of the Regional Director’s rulings on its Objections No. 1 and 3. As we show below, neither Objection warrants review by the Board.

**OBJECTION 1:** “Petitioner’s unfair labor practice charge 13-CB-271766, filed against SPFPA on January 24, 2021, was a bad faith attempt that coerced voters and influenced the election results.”

In rejecting SPFPA’s Objection 1, the Regional Director relied upon several well-settled principles. First, he stated that the Board has held that a party has the right to file an unfair labor practice charge and that the mere filing of a charge does not constitute objectionable conduct.

*Stericycle, Inc.*, 357 NLRB 582, 585 n. 16 (2011). Second, he stated that in considering allegations of misrepresentations, the Board

applies the longstanding *Midland* standard under which it will not probe into the truth or falsity of the parties' campaign statements and will not set aside an election on the basis of misleading statements unless "a party has used forged documents which render the voters unable to recognize propaganda for what it is." *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982).

[Exhibit 1 at 2]. Under *Midland*, the Board acknowledges that misstatements are resolved by open debate, not by the Board. NUNSO has given the Region a video of SPFPA's Zoom meetings in which its counsel refutes NUNSO's charge.

SPFPA has not presented a single basis for Board review of these Board decisions.

Instead, SPFPA erroneously argues that NUNSO filed its charge in bad faith and misleadingly accused SPFPA of unlawful conduct. SPFPA willfully and wantonly ignores the fact that the Region has issued a Complaint based on NUNSO's charge. [Exhibit 2]. SPFPA's Answer to the Complaint was filed on April 2, 2021. Absent settlement, a hearing is scheduled for July 14, 2021. It may well be that an Administrative Law Judge or the Board will dismiss the Complaint. But the issuance of the Complaint makes clear that NUNSO did not file the charge in bad faith. And at least the Region believes that the charge has merit.

SPFPA's attempt to defend against the Complaint in its Request for Review is improper. The Board has held that unfair labor practice charges cannot be reviewed in representation case proceedings. Furthermore, the validity of the charge is irrelevant under *Stericycle*.

**OBJECTION 3:** "The Region's ballots (both sample and actual ballots) listed the incorrect names of both the Petitioner and Incumbent. The actual ballot incorrectly listed SPFPA as "International Union, Security, Police and Fire Professionals" without "of America" or the "SPFPA"

acronym for which it can be identified. The sample ballot also incorrectly listed Petitioner as “National Union of Nuclear Security Officers, International affiliated with LEOS-PBA [emphasis added],” although “International” is not part of its name, and listed Incumbent as “International Union, Security, Police and Fire Professionals (SPFPA)” with “of America” missing.”

We acknowledge that the Region mislabeled NUNSO and SPFPA on the official ballot. However, these errors could not have affected the result of the election. Voters clearly knew the correct name of the Incumbent Union which had represented them for years. They certainly knew Local 228. The omission of “of America” would not have caused the loss of votes. At the same time, adding “International” to NUNSO’s name could not have misled voters.

The Regional Director properly rejected this Objection, relying on *Woods Quality Cabinetry Co.*, 340 NLRB 1355 (2003); *Douglas Aircraft Co.*, 51 NLRB 161 (1943); *Mattison Machine Works*, 120 NLRB 58 (1958); and *V. LaRosa & Sons, Inc.*, 121 NLRB 671 (1958). [Exhibit 1 at 3]. SPFPA merely objects to the Regional Director’s characterization of the problem as a “minor” error.

It is well settled that “[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5<sup>th</sup> Cir. 1991) (internal citations omitted). Therefore, “the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one.” *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6<sup>th</sup> Cir. 1989). To prevail in cases where there is an objection to the conduct of the election, the objecting party must establish facts raising a “reasonable doubt as to the fairness and validity of the election.” *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282

(1969), *enfd.* 414 F.2d 999 (2<sup>nd</sup> Cir. 1969), *cert. denied* 396 U.S. 1010 (1970). In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has “the tendency to interfere with employees’ freedom of choice.” *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716, 716 (1995).

As the Board stated in *Transportation Unlimited*, 312 NLRB 1162, 1162 (1993), “it requires more than mere speculative harm to overturn an election.” See also *J.C. Brock Corp.*, 318 NLRB 403, 404 (1995). The objecting party has the sole burden of providing evidence in support of its objections. NLRB Casehandling Manual (Part Two), Section 11392.9. With respect to offers of proof, the Board has found that an objecting party “may satisfy its burden by specifically identifying witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objections.” *Transcare New York, Inc.*, 355 NLRB 326, 326 (2010); *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983); NLRB Casehandling Manual (Part Two), Section 11392.6. The objecting party also may satisfy this burden by providing specific affidavit testimony and other specific evidence in support of its objections. *In re City Wide Insulation of Madison*, 338 NLRB 793, 794–95 (2003); cf. *River Walk Manor, Inc.*, 269 NLRB 831 (1984).

SPFPA, the incumbent, provided no evidence that any eligible voter was affected by the Region’s error.

In sum, the Board should deny the Request for Review and the Request for a Stay of NUNSO's certification,

Respectfully submitted,

/s/ Jonathan Axelrod  
Jonathan G. Axelrod  
Beins, Axelrod, & Keating, P.C.  
1717 K Street NW Suite 1120  
Washington, DC 20006  
telephone: 202-328-7222  
telecopier: 202-328-7030  
e-mail: [jaxelrod@beinsaxelrod.com](mailto:jaxelrod@beinsaxelrod.com)

Counsel for the Petitioner

## **CERTIFICATE OF SERVICE**

The undersigned certifies that he electronically served a copy of this Opposition to the Request for Review on March 3, 2021 upon the following:

Paul Hitterman  
NLRB Region 13, Acting Regional Director  
[paul.hitterman@nrlb.gov](mailto:paul.hitterman@nrlb.gov)

Todd Steenson  
Attorney for the Employer  
[todd.steenson@exeloncorp.com](mailto:todd.steenson@exeloncorp.com)

Matthew J. Clark  
Attorney for the Intervenor  
[Matt@unionlaw.net](mailto:Matt@unionlaw.net)

/s/ Jonathan G. Axelrod